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Supreme Court, U.S.
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No. 03-880

In The Supreme Court of the United States

RICHARD PIEPER,

Petitioner,

v.

AMERICAN ARBITRATION ASSOCIATION

and

GERALD HAMBLY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals To The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the *Rooker-Feldman* doctrine bars a Federal Court from assuming jurisdiction relative to a state court's final appealable order that a matter proceed to arbitration, after the time for appeal has passed without an appeal having been filed.

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I. STATEMENT OF THE CASE

This case involves a dispute between shareholders of All Points Investment, Inc., an Ohio Corporation. The dispute comes before this Court on Plaintiff's appeal of a decision by the Sixth Circuit Court of Appeals affirming the District Court's decision in favor of the defendant, Gerald Hambly, granting his 12(b)(6) motion to dismiss for lack of subject matter jurisdiction base upon the *Rooker-Feldman* doctrine.

Petitioner has based his arguments in favor of *certiorari* upon an erroneous statement of law, that the state court order requiring that this matter proceed to arbitration was interlocutory.

During the course of the litigation, Petitioner never cited a single case which stood for the proposition that the *Rooker-Feldman* doctrine did not apply to interlocutory orders. Because the case law initially discovered by Respondent Hambly was unanimous in holding that interlocutory orders were not subject to collateral attack in federal courts, the underlying claim that the state court's order was "interlocutory" never researched.

During oral argument before the Sixth Circuit Court of Appeals, that Court indicated that its preliminary research had indicated that one appellate court, the First Circuit Court of Appeals, had held in *Cruz v. Melecio*, 204 F.3d 14, 21 n.5 (1st Cir. 2000), that the *Rooker-Feldman* doctrine did not apply to interlocutory orders.

The time for submitting written arguments having passed prior to oral arguments, no further response was made before the Sixth Circuit Court of Appeal issued its decision in this case.

However, a review of Ohio law clearly reflects that the decision by a state court granting or denying a request to compel arbitration is a final, appealable order, and Petitioner simply failed to timely exercise his appellate rights in this case.

II. REASONS FOR DENYING THE WRIT

Ohio law provides that an order that grants or denies a stay of a trial of any action pending arbitration is a final order, and may be reviewed on appeal as a matter of right. As Section 2711.02(C) of the Ohio Revised Code states:

> (C) Except as provided in division (D) of this section, an order under division (B) of this section that grants or denies a stay of a trial of any action pending arbitration, including, but not limited to, an order that is based upon a determination of the court that a party has waived arbitration under the arbitration agreement, is a final order and may be reviewed, affirmed, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 25 of the Revised Code.

The fact that arbitration orders are final and appealable has been acknowledged by numerous Ohio court decisions. *See, Maestle v. Best Buy Company*, 100 Ohio St.3d 330, ___ n.1, 800 N.E.2d 7, __ n.1 (2003); *Gerig v. Kahn*, 95 Ohio St.3d 478, 480 n.7, 769 N.E.2d 381, 384 n.7 (2002); *Cross v. Carnes*, 132 Ohio App.3d 157, 164 n.6, 724 N.E.2d 828, 833 n.6 (1998); *Board of Library Trustees v. Ozanne Construction Company, Inc.*, 100 Ohio App.3d 26, 28, 651 N.E.2d 1356 (1995); *Mabrey v. Victory Basement*

Waterproofing, Inc., 92 Ohio App.3d 8, 13, 633 N.E.2nd 1205, 1208-1209 (1993); *Kelm v. Kelm*, 73 Ohio App.3d 395, 398, 597 N.E.2d 535, 536 (1992); *Stewart v. Shearson Lehman Brothers, Inc.*, 71 Ohio App.3d 305, 593 N.E.2d 403 (1992) (discussing enactment of R.C. §2711.02, effective May 31, 1990); *See also*, 4 Ohio Jurisprudence 3d *Appellate Review*, §66 at pages 152-154 (1999).

While the First Circuit Court of Appeal's holding in *Cruz v. Melecio*, 204 F.3d 14, 21 n.5 (1st Cir. 2000) is erroneous, and should be reversed, this case does not present the Court with the issue of a collateral attack in federal court on a state court's interlocutory order. Instead, as demonstrated in the above citations, the order compelling arbitration was a final appealable order.

There are few legal principles more firmly established than the *Rooker-Feldman* doctrine, as set forth in *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923), *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Asarco, Inc. v. Kadish*, 490 U.S. 605, 622-623 (1989). Accordingly, there is no reason for this Court to grant Certiorari on the issue of Petitioner's collateral attack in federal court on a garden variety final and appealable state court order compelling arbitration.

III. CONCLUSION

For all of the reasons set forth above, Respondent respectfully requests this Honorable Court deny the Petition for the Writ of Certiorari.

Respectfully submitted,

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